

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8560 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO.

2. To be referred to the Reporter or not? NO.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? NO.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO.

5. Whether it is to be circulated to the Civil Judge?
NO.

RAVI ANANDRAJ JAMJAGLI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 03/12/98

ORAL JUDGEMENT

1. This writ petition under Article 226 of the Constitution of India has been filed seeking a writ of certiorari quashing the detention order dated 16th March, 1998, Annexure "A", passed by the Police Commissioner, Baroda City, under Section 3 (2) of the Prevention of Anti-social Activities Act (for short "PASA") and for a writ of habeas corpus for immediate release of the petitioner from illegal detention.

2. The brief facts are that from the report of the Sponsoring Authority and considering the registration of 3 cases under Bombay Prohibition Act against the petitioner and further considering the statements of 3 witnesses who requested that on account of fear from the petitioner their address and identity may be kept secret, the detaining authority came to the conclusion that the petitioner is a bootlegger and his activities were prejudicial for maintenance of public order. The detaining authority also considered alternative remedies which could be taken against the petitioner and further concluded that these alternative remedies were ineffective to stop the repeated anti-social activities of the petitioner. Accordingly preventive detention was considered to be the only efficacious remedy. Hence, the impugned order was passed.

3. The impugned order has been challenged by the learned counsel for the petitioner only on one ground that the activities of the petitioner disclosed in the "grounds of detention" cannot be said to be prejudicial for maintenance of public order. Reliance was placed upon the case of Piyush Kantilal Mehta v. Commissioner of Police, Ahmedabad City, A.I.R. 1989 SCC 491

4. Learned A.G.P. on the other hand contended that the statements of the 3 witnesses clearly indicate that on those three occasions public order was certainly disturbed and the petitioner being a bootlegger attempted to disturb public order on three occasions in connection with his bootlegging activities and as such the impugned order need not be quashed.

5. In order to appreciate this contention, the grounds of detention as contained in Annexure "B" have to be taken into consideration. Three cases under Bombay Prohibition Act were registered against the petitioner in

the running year 1998. In these cases, 35 liters, 105 liters and 125 liters country made liquor were recovered from the petitioner. He has been booked under relevant Sections of Bombay Prohibition Act. These cases coupled with the allegations in the grounds of detention that the petitioner is engaged in bootlegging activities namely he has contacts with persons who distill country made liquor, he brings country made liquor on the scooter and auto rickshaw, he stores the same and sells the same and also quarrels with the witnesses who oppose the petitioner's activities clearly indicate that the petitioner is a bootlegger within the meaning of Section 2-B of the PASA. As observed by the Apex Court in Piyush Kantilal Mehta's case (Supra) mere bootlegging activity is not enough to keep a person under preventive detention. The Apex Court observed that it may be that the petitioner is a bootlegger within the meaning of Section 2 (b) of the Act, but merely because he is a bootlegger, he cannot be preventively detained under the provisions of the Act, unless as laid down in Sub-section (4) of Section 3 of the Act his activity as a bootlegger affects adversely or are likely to affect adversely the maintenance of public order. The Apex Court in this very case further observed that the detaining authority in that case failed to substantiate that the alleged anti-social activities of the petitioner has adversely affected or are likely to affect maintenance of public order. The threat given by the petitioner in that case to few witnesses was also taken into consideration. The Apex Court observed that for such incidents, the petitioner may be punished for the alleged offences, but he cannot be said to have affected even tempo of the life of the community. Thus, in view of this verdict of the Apex Court, unless the bootlegging activities are prejudicial for maintenance of public order, he cannot be preventively detained.

6. From the grounds disclosed in the grounds of detention, in the instant case, it is clear that the petitioner is a bootlegger. It is now to be seen whether his activities were prejudicial to maintenance of public order or not.

7. Mere registration of 3 cases under the Bombay Prohibition Act is not enough for concluding that the petitioner's activities in those incidents were prejudicial to maintenance of public order. There is no indication that in these three cases, when the premises of the petitioner was raided and country-made liquor was recovered, he created such situation which was likely to disturb public order or which had disturbed the public

order. As such these cases are not enough to infer that the activities of the petitioner were prejudicial for the maintenance of public order.

8. In addition to this, the detaining authority has considered the statements of three witnesses. Those witnesses, on account of fear of the petitioner, requested that their names and address may not be disclosed. The fear in the mind of the witnesses was not only verified by the Police Commissioner, Traffic Branch, Vadodara City, but the detaining authority himself personally verified the statements and again interrogated the witness Nos. 2 and 3 in person and was satisfied that the apprehension in the mind of the witnesses was reasonable. The detaining authority in these circumstances was justified in taking shelter behind Section 9 (2) of the PASA Act and was further justified in not disclosing the names and addresses of those witnesses. Likewise, he was justified in not furnishing copies of statements of those witnesses to the petitioner.

9. The first witness narrated the incident dated 23-11-97. On 23-11-97 at about 7-00 p.m. the witness was present at his Pole when the petitioner along with his associates came on scooter and told the witness to keep the stock of liquor and on refusal of the witness, the petitioner got excited and the petitioner and his associates started beating the witness. The persuasion of the witness to the petitioner went in vein and he was continuously beaten by the petitioner, and therefore, persons of the locality collected. They tried to rescue the witness whereupon the petitioner got excited and abused the persons of the locality as follows :

"Salao, now you have become brave ; from where
you gathered courage to refuse me to keep my
liquor ".

10. Not only this, the petitioner after giving such abuses to the members of the public, took out Gupti from his scooter. His associate took out Rampuri knife and both rushed towards the mob of the people and so, the people started running by raising cries and the people for their safety entered their houses and closed the doors and windows of the houses. The traffic on the road was stopped. The petitioner further by raising shouts threatened the residents of the locality that if henceforth the petitioner will be refused to keep liquor, he will kill everybody one by one. The petitioner placed his Gupti on the abdomen of the witness and threatened him to kill. On this narration, the detaining authority

concluded that this incident created disturbance of public order.

11. The next witness narrated the incident of 29th December 1992 which occurred at 6-30 p.m. On that day the witness was coming on his Metador to Vadodara. The petitioner stopped the metador of the witness and sat on the front seat of the metador. He told his associates to quickly put the goods in the vehicle. Thereafter, his two associates brought two bags from nearby and when they were about to put the bags in the vehicle, the witness smelt that it was liquor and so he objected to the putting of the bags in his vehicle. The petitioner got excited and he kicked the witness and started beating him. The witness raised shouts, and therefore, surrounding lorry-galla holders and other persons standing nearby as well as vehicle owners collected at the spot. On seeing the large mob of people, the petitioner got excited and he took out Gupti from his waist and rushed towards the people. The lorry-galla holders had also ran away leaving their business and an atmosphere of fear and terror was created. At that time, another Metador came and the petitioner along with his associates ran away by putting the liquor in the said Metador.

12. The third witness narrated the incident dated 3-2-98 which took place at 10-00 a.m. In this incident, the motorcycle of the witness dashed with the scooter of the petitioner from behind. The petitioner and pillion rider who was having a canvas bag fell down. The liquor had spread over from the canvas bag. The petitioner and his associates got excited. He caught hold of the witness and was made to fall on the ground. He was beaten. When the witness and his friends raised an alarm, passers by and vehicle holders as well as nearest lorry-galla holders came running. A large crowd collected at the spot. One person from the crowd said that police be called, whereupon the petitioner got excited. The petitioner took out Gupti from the scooter and his associates took out dragger. They rushed towards the people. The people and vehicle holders ran away. Atmosphere of fear and terror was created on the road. The traffic was stopped.

13. From these three incidents, the detaining authority came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order. This subjective decision of the detaining authority requires no interference. From the narration of the aforesaid three witnesses, it is clear that the

petitioner had no fear of police in connection with bootlegging activities. He was pressurising the witnesses to store the country-made liquor and whoever refused to oblige the petitioner, he was so to face the threat of the petitioner. On one occasion, Gupti was placed on the abdomen of one witness. Even the passers by and vehicle owners were not spared. Threats and abuses were given to them that no one should dare to refuse the dictate of the petitioner for keeping liquor with them. Petitioner was free to stop any vehicle passing on the road and force such vehicle owners to carry illicit liquor on their vehicles. If the vehicle owners refused, they had to face the threat and dire consequences from the petitioner. The incident narrated by the second witness further indicates that not satisfied with the quarrel with metador owner, the petitioner stopped another metador and kept his liquor in the said vehicle on the scene of occurrence. All these incidents gave clear indication that there was apprehension of disturbance of public order and public order was likely to be disturbed because in one of the incidents narrated by the first witness, the members of the crowd ran for shelter inside the house and closed the doors and windows from inside. Thus, apparent terror and fear was created in the minds of the residents of the locality in which the incident took place and such action certainly disturbed even tempo of the life of the locality as well as the area where such incident took place.

14. In this case, it is further disclosed in the grounds of detention that the petitioner was bringing and selling country-made liquor of inferior quality. It is not a case where country-made liquor of average or ordinary quality was being brought and sold by the petitioner. Country-made liquor and that too of inferior quality is certainly injurious to the public health. In view of explanation to sub-section (4) of Section 3 of the PASA Act by fiction of law, public order shall be deemed to have been affected adversely or deemed likely to be affected adversely, inter-alia if any of the activity of any person referred to in this Section is directly or indirectly, causing or is likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Sale of country-made liquor of inferior quality coupled with anti-social activities of the petitioner were certainly grievous to public health and injurious to life of public. Thus, by this deemed fiction under explanation to sub-section 4 of section 3 of the PASA

Act, it can further be said that by the activities of the petitioner, public order was disturbed. The detaining authority was therefore, justified in coming to the conclusion that the activities of the petitioner were prejudicial for maintenance of public order.

15. The detaining authority has observed that preventive action under Section 93 of the Prohibition Act was taken against the petitioner and Chapter Case No.34 of 1998 dated 31st January, 1998 is pending. This could not be effective remedy. The detaining authority further found that alternative preventive remedies under Sections 107, 109 and 110 of the Criminal Procedure Code as well as under Section 56 of the Bombay Police Act were also ineffective. Thus, the detaining authority gave due consideration to the efficacious alternative remedies and found that the preventive detention was the only efficacious remedy on the facts and circumstances of the case.

16. For the reasons given above, the detaining authority was justified to pass the detention order. It does not suffer from any illegality. Petition has therefore, no merits, and is bound to fail. The writ petition hereby dismissed.

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mithabhai